

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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ROSARIO WADE,

Plaintiff,

- against -

SHARINN & LIPSHIE, P.C., et al.,

Defendants.
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ORDER

CV 07-2838 (DRH) (AKT)

A. KATHLEEN TOMLINSON, Magistrate Judge:

Pending before the Court are two motions for discovery filed by Plaintiff Rosario Wade (“Plaintiff”) in this action brought under the Fair Debt Collection Practices Act (“FDCPA”).

First, on September 11, 2008, Plaintiff moved to compel the production certain requested documents and interrogatory responses. By Order dated September 17, 2008 [DE 22], I reserved decision on that motion pending further discussions among the parties. By letter dated October 3, 2008, I was advised that the parties had resolved all of the issues raised in Plaintiff’s September 18, 2008 motion except one, namely, the net worth of Defendant Cohen & Slamowitz, LLP [DE 25]. Defendant did not respond to the renewed motion.

Next, Plaintiff filed a letter motion dated December 23, 2008 [DE 32] seeking to compel the deposition of a representative of Defendant Cohen & Slamowitz. By letter dated December 30, 2008 [DE 33], Defendant Cohen & Slamowitz filed its opposition to the motion, asserting that the motion should be denied since Plaintiff sought the deposition for the purpose of obtaining information related to punitive damages and that Plaintiff cannot recover punitive damages under the FDCPA. Shortly thereafter, Plaintiff filed a “Supplemental Motion to Compel” dated January 2, 2009 [DE 34], in which Plaintiff attached an affidavit of net worth

executed by Mitchell G. Slamowitz, Esq. That affidavit had been redacted from the filing Plaintiff made on December 23, 2008 and Plaintiff asserted that there was no basis to retain the redacted status of the document. Most recently, Plaintiff has filed a motion for an extension of time to complete discovery [see DE 35].

Plaintiff seeks to depose a representative of Defendant Cohen & Slamowitz with respect to the net worth of the firm and noticed a deposition for such representative. On the date of the scheduled deposition, Plaintiff's counsel was advised that no representative would be produced but that an affidavit of net worth would be provided. Plaintiff contends that the affidavit that was provided is clearly insufficient and thus has moved to compel the deposition. Defendant's sole argument for denying the motion to compel (and by assumption the related motion to compel) is that punitive damages are not permitted under the FDCPA. This argument is insufficient to justify Defendant Cohen & Slamowitz's refusal to provide the requested information. Plaintiff has asserted separate claims of negligence and gross negligence and seeks punitive damages in connection with those claims – not in connection with its FDCPA claims. Moreover, as pointed out by Plaintiff, the “court may take a defendant's financial circumstances, wealth, or net worth into consideration when determining the exemplary damages to be awarded against that defendant.” *Sabatelli v. Allied Interstate*, No. 05-3205, 2006 WL 2620385 (E.D.N.Y. Sept. 13, 2006).

Accordingly, Plaintiff's motion to compel the deposition of a representative of Defendant Cohen & Slamowitz is hereby GRANTED. Plaintiff's motion to compel the production of documents setting forth the net worth of Defendant Cohen & Slamowitz is also GRANTED, and such documents are presumptively covered by the Confidentiality Order “so ordered” by this

Court on December 5, 2008. Defendant Cohen & Slamowitz shall produce the requested documents no later than January 22, 2009 and shall make a representative available for deposition no later than February 6, 2009. Plaintiff's motion for an extension of time to complete discovery is also GRANTED. An Amended Case Management and Scheduling Order shall be entered separately.

SO ORDERED.

Dated: Central Islip, New York
January 7, 2009

/s/ A. Kathleen Tomlinson
A. KATHLEEN TOMLINSON
U.S. Magistrate Judge